THE STATE OF WYOMING

JIM GERINGER
GOVERNOR

Public Service Commission

HANSEN BUILDING, SUITE 300 2515 WARREN AVENUE CHEYENNE, WYOMING 82002
(307) 777-7427 FAX (307) 777-5700 TTY (307) 777-7427 http://psc.state.wy.us

STEVE ELLENBECKER
CHAIRMAN
STEVE FURTNEY
DEPUTY CHAIRMAN
KRISTIN H. LEE
COMMISSIONER

STEPHEN G. OXLEY
SECRETARY AND CHIEF COUNSEL
DAVID M. MOSIER
ADMINISTRATOR

RECEIVED
AUG 15 2000
FCC MAIL ROOM

August 11, 2000

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th St., S. W.
Room 5B-540
Washington, D. C. 20554

RE: CC Docket 96-45

Dear Ms. Salas:

Enclosed herewith are the original and four copies of the comments of the Wyoming Public Service Commission in the above-referenced docket concerning the Federal-State Joint Board on Universal Service Recommendation for Phasing Down Interim Hold Harmless Provision. Please file and distribute the same.

Thank you for your assistance in this matter.

Yours very truly,

Stephen G. Oxley

STEPHEN G. OXLEY
Secretary and Chief Counsel

Before the Federal Communications Commission
Washington, D.C. 20554

In the Matter of the	)		
Federal-State Joint Board on	)	CC Docket No. 96-45	
Universal Service	)		

RECEIVED
AUG 15 2000
FCC MAIL ROOM

COMMENTS OF THE WYOMING PUBLIC SERVICE COMMISSION ON THE RECOMMENDED DECISION OF THE FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE REGARDING THE PHASE-DOWN OF THE INTERIM HOLD-HARMLESS PROVISIONS FOR NON-RURAL CARRIERS

The Wyoming Public Service Commission (WPSC) hereby submits its comments to the Federal Communications Commission (Commission) in response to the *Common Carrier Bureau's Request for Comments on the Federal-State Joint Board on Universal Service Recommendations for Phasing Down Interim Hold-Harmless Provisions.* The WPSC is the agency of the State of Wyoming having the jurisdiction to regulate, *inter alia,* the intrastate activities of telecommunications companies serving in Wyoming. As such, the WPSC is an interested party in this proceeding. Additionally, the WPSC has been a full and active participant in the process of developing and revising federal universal service support for non-rural carriers.

INTRODUCTION

In 1995, the Wyoming Legislature passed the Wyoming Telecommunications Act of 1995 (the Wyoming Act) which mandated that telephone companies set their prices above a total service long-run incremental cost (TSLRIC) floor. The Wyoming Act also mandated the removal of subsidies between and among services. Additionally, the Wyoming Legislature provided for a Wyoming Universal Service Fund to support any customer in Wyoming whose price for local telephone service exceeds one hundred thirty percent (130%) of the weighted statewide average rate.

As of October 1, 1999, Qwest's (formerly U S WEST) prices, including those for local service, were set based on a TSLRIC cost model, and the implicit subsidies have been eliminated from those prices. Qwest's local service prices have also been deaveraged into a base rate area and three zones outside of the base rate area. The resulting local service prices for Wyoming's non-rural customers are: $23.10 in the base rate area, $38.60 per month in zone one, $48.60 per month in zone two, and $69.35 per month in zone three. The current federal universal service funds received by Qwest is targeted to customers in the following manner: (a) no federal universal service fund support is directed to base rate area customers; (b) customers in zone one receive a rate credit on their bills of $2.00 per line per month; (c) zone two customers receive a credit of $6.50 per line per month; and (d) zone three customers receive $12.25 per line per month as an explicit, line item, bill credit. The WPSC and Qwest are currently working on a methodology to adjust the level of the bill credit periodically to reflect any change in the level of federal universal service fund support received from the high cost fund. Thus, any reduction in federal universal service support will be reflected on customers' bills as a lesser credit. In turn, this will raise customers' rates and the statewide average rate, and will put additional pressure on the Wyoming state universal service fund, with funding already at a level that exceeds four percent of the Wyoming intrastate revenues.[1]

After targeting the federal universal service fund, the Wyoming State Universal Service fund then pays the difference between the true cost of serving a rural, high cost customer, as reflected in the TSLRIC-based prices, and the 130% of the weighted statewide average rate. The current maximum amount to be paid by Wyoming residential customers for local service is $32.96 per month, before taxes and surcharges. However, when all of the charges associated with receiving dial tone are totaled, including charges for everything from number portability to the subscriber line charge to universal service surcharges, the local bill for rural customers approaches $40 per line per month. Nearly $40 per month is paid for just dial tone by more than one in five Qwest customers in Wyoming! The remaining eighty percent pay nearly $28.

[1] While the surcharge for the current year is only two percent, this reflects less than the funding would indicate is needed, in order reduce the fund balance by some previously collected excess amounts.

The WPSC believes it has acted consistently with the intent of the federal Telecommunications Act of 1996. By removing subsidies from local exchange services, basing local service rates on forward looking costs, deaveraging costs and prices, targeting federal universal service support, reducing access charges and eliminating carrier common line charges, and making subsidies explicit rather than implicit, we have made it possible for competitors in Wyoming to make business decisions based on true economic factors. The WPSC is doing all that it can to remove barriers to local competition in the Wyoming market. We do not, however, believe that competition should come at a basic telephone service price which is unaffordable to rural Americans. Comparability of rates and services, as well as explicit support that is sufficient and predictable are key policy mandates of the federal Telecommunications Act of 1996. We believe that the Joint Board has not given enough consideration of these affordability policies when it recommended the phase-down of interim universal service support for non-rural carriers at the rate of $1 of average support per year. We ask you to reconsider and modify the Joint Board's recommendation in this matter.

COMMENTS

The Joint Board has recommended that the "interim hold-harmless support, excluding LTS, be phased down beginning January 1, 2001, through annual $1.00 reductions in each recipient's average monthly, per-line support." The Joint Board further indicates that this approach is the "best means of ensuring a prompt, equitable phase-down of interim hold-harmless support without causing undue rate disruption." We strongly disagree. Federal support mechanisms are already in violation of the federal statutory mandates that support be sufficient and predictable and that quality services be available at just, reasonable, and affordable rates. The recommendation of the Joint Board only makes the situation worse.

Wyoming's circumstances are such that Qwest's support is subject to the hold-harmless provisions, but the level of hold-harmless is a moving number dependent on the results of the latest model run. For instance, the original calculations that were issued with the October 1999, forward-looking cost support decision for non-rural carriers, showed that Qwest's Wyoming operations would receive approximately $3.2 million annually in federal high cost support. Based on these figures, Wyoming would have actually received about an additional $1 million support from the hold-harmless provisions, making it very important that those hold-harmless provisions stay in place as long as possible, given the already $40 basic dial tone bills being received by a substantial portion of the Wyoming ratepayers.

Model inputs and outputs have continued to change, thus intensifying the need for hold-harmless support in Wyoming. Estimated first quarter 2000 support, based on December 30, 1999, line counts, showed support from the forward looking cost model computations of $4.7 million annually, while the hold-harmless estimates exceeded $5.6 million. On average, this $900,000 annually equates to more than $1.30 per month for each of the Wyoming customers receiving support. When residential rates in Wyoming are already double the national average, a reduction of $1.30 is meaningful and important, even if it does not yet provide enough support to comply with the provisions of the federal Act.

The federal Act contains three major universal service fund principles that seem to be unheeded in from the Joint Board's recommendation. First, Section 254(b)(1) of the Act states that "Quality services should be available at just, reasonable, and affordable rates." There has been no affordability study provided by the Joint Board or the Commission that shows that a $40 dial tone bill is reasonable or affordable. In fact, Wyoming is in the process of completing its second affordability study. In the first study, performed in 1997, customers expressed grave concerns about their ability or willingness to continue with local phone service when local rates exceed the $25 to $30 level. The Joint Board or the Commission provide no support to show that this recommendation of actually *reducing the federal support to Wyoming customers* is compliant with the universal service fund principle of affordability.

A second important universal service fund principle found in the federal Act is that rates and services should be reasonably comparable between urban and rural areas. Again, the FCC's most recent report on average rates, found in the *Statistics of Communications Common Carriers, 1998-1999 Edition*, shows that the representative monthly charge for residential local service in urban areas is $13.77 before taxes and surcharges. In Wyoming, the least expensive residential local service rate offered by Qwest, based on the elimination of subsidies and the use of forward looking costs, is $23.10 per line per month, before taxes and surcharges. This is 67% higher than the national representative urban rate. Even with today's federal high cost support, which is proposed to be reduced, the highest Qwest rural rate in Wyoming is *four times* the average urban rate reported by the Commission. Because the support currently fails the comparability test, it must not be reduced further. The Joint Board's recommendations to phase down the hold-harmless support must not be adopted.

A third important provision of the federal Act requires that the federal and state universal service support mechanisms together be specific, predictable, and sufficient. Wyoming has implemented a state universal support mechanism that currently provides funding in excess of $8,000,000 annually to customers. This $8 million represents more than four percent of the current jurisidictional intrastate revenues in Wyoming. If the Joint Board's recommendations were to be adopted, we would only receive less than $5 million annually, which is 0.004 percent of the total interstate toll revenues reported to the Commission for 1998. This shows that we are more than carrying our share of the burden in the federal-state partnership anticipated by the federal Act, but raises the question of whether the federal jurisdiction is carrying its weight. We continue to believe that the facts show current federal funding levels are not sufficient, and that the elimination of part of Wyoming's federal support will only make matters worse.

Since Wyoming is targeting the federal funds to only high cost customers, as described above, we calculate that each of these Qwest customers receiving support is receiving an average amount of about $6 per line per month. However, the Commission's average computations are based on all reported line counts, which reduces the average to about $1.63 per line for all Qwest lines, regardless of whether they are considered to be high cost customers. This is a significant difference in how these numbers are perceived. It seems odd to be working with study area wide averages when there is a Commission requirement to *target* the funds to only high cost customers. This less realistic approach unfairly penalizes Wyoming. This issue of averaging is further complicated by the wide disparity of costs for the wire centers found in Wyoming.

According to the Commission's own models, the specific Wyoming wire center costs range from about $1,400 to $23 per line, yet we are only receiving an average of about $1.63 per line in support. Under the FCC's deaveraging, most of that support would go to some of the very small, high cost exchanges, while under the requested waiver of the WPSC, the support is spread with the three sets of bill credits to all high cost customers. But, it is not clear in the Joint Board's recommendation how the reduction in support would be spread, except for the specific discussion in the Joint Board's recommendation about spreading the reduction in cases of sales of exchanges. In other cases though, is the reduction to come as $1 per line per year to all customers regardless of their cost? Or, in Wyoming, would we reduce the support by $1.00 per year on a proportional basis, so that the customers in the wire centers with costs of $1,400 per line, could actually end up with reduced support of several hundred dollars per line per month? While we urge that the Joint Board's recommendation to phase out hold-harmless support should be soundly rejected, if it is not, we request clarification from the Commission on how the reduction in hold-harmless support should be managed in view of the required deaveraging of support. The actual implementation needed to carry out the Joint Board's recommendation is not clear.

CONCLUSION

We ask the Commission to soundly and completely reject the Joint Board's recommendation to phase down the interim hold-harmless at the average rate of $1.00 per line per year. The Joint Board indicates that the hold-harmless measures were meant to be transitional to allow states and carriers to implement rate designs to adjust to the new, forward-looking support mechanisms. However, in Wyoming, we have already implemented a rate design meant to foster the competitive environment. We do not believe that the federal Act should be misread or ignored, causing our ratepayers to be punished for embracing the competitive environment that was envisioned under both our Wyoming state and federal Acts. The Commission must turn to the language of the law and implement a support mechanism for both rural and non-rural carriers that is consistent with the universal service provisions of federal law. Until it does so, we maintain that the Commission has no choice but to keep the current hold-harmless mechanism in place. To do otherwise harms ratepayers in rural states and violates every statutory and historic principle of maintaining affordable telephone service throughout our nation.

We would be pleased to discuss any of our comments and recommendations with you further, at your convenience.

Submitted this 11th day of August, 2000.

Respectfully Submitted,

Steve Ellenbecker

Steve Ellenbecker
Chairman